IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 21-30589(MBK)
LTL MANAGEMENT LLC,	.	
	.	U.S. Courthouse
Debtor.	.	402 East State Street
	.	Trenton, NJ 08608
IN RE:	.	Case No. 23-12825 (MBK)
LTL MANAGEMENT LLC,	.	
Debtor.	.	Wednesday, August 2, 2023
	.	9:57 A.M.

TRANSCRIPT OF STATUS CONFERENCE REGARDING 2023 CHAPTER 11 CASE; AND OMNIBUS MOTION OF THE SUBSTANTIAL CONTRIBUTION CLAIMANTS FOR ALLOWANCE OF ADMINISTRATIVE CLAIMS FOR REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD FROM OCTOBER 14, 2021 THROUGH NOVEMBER 12, 2021 (PRIOR TO THE OFFICIAL COMMITTEE OF TALC CLAIMANTS' RETENTION OF COUNSEL) THAT PROVIDED A SUBSTANTIAL CONTRIBUTION IN THE DEBTOR'S CASE [NO. 21-30589, DKT. 3949]; AND MOTION OF AYLSTOCK, WITKIN, KREIS & OVERHOLTZ, PLLC FOR ALLOWANCE OF SUBSTANTIAL CONTRIBUTION CLAIM [NO. 21-30589, DKT. 3951]

BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

Audio Operator: Kiya Martin

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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(Proceedings commenced at 9:58 a.m.)

THE COURT: Good morning again. This is Judge Kaplan for those who are watching or listening remotely. We will go over the LTL Management calendar.

We have two matters to be argued that are related, the substantial contribution motions and then what I anticipate is a status conference and discussion regarding where we go from here with the matters that we have that are calendared for today and other matters that I guess are scheduled for the 22nd and thereafter.

Does anyone have any administrative matters they wish to discuss at this point?

UNIDENTIFIED SPEAKER: No, Your Honor. Not from our side.

THE COURT: All right. Then I think why don't we have the substantial contribution motions, why don't we have those argued.

OPERATOR: Recording in progress.

THE COURT: Good to know.

(Laughter)

THE COURT: And before we start, for those who are appearing remotely, as usual, please make use of the "raise hand" function and we'll do my best to bring you on board.

Good morning, Mr. Abramowitz.

MR. ABRAMOWITZ: Good morning.

Arthur Abramowitz of Sherman Silverstein representing the substantial contribution claims.

THE COURT: Proceed.

MR. ABRAMOWITZ: Your Honor, before I get into the substance of the argument, I want to identify for the Court the substantial contribution claimants that I represent. They consist of two separate ad hoc committees representing creditors that were formed prior to the appointment of the TCC as the Official Creditors' Committee.

One of those committees was formed by the MDL Plaintiffs' Steering Committee or PSC, and the second was formed by the mesothelioma claimants. I also represent a law firm that performed services and it also engaged an experienced and well-versed firm that worked in coordination and in conjunction with both the PSC and meso committee in representing creditors during this TCC period.

No one can doubt that LTL was an extraordinary case. J&J is a corporate icon and, at the time LTL filed, had a value in excess of $400 billion. LTL was not an overnight creation. For months, some of the most sophisticated attorneys in the United States meticulously created the LTL paradigm and strategized the case well before the case was filed in North Carolina.

This Court's records reflect that J&J employed extreme measures to avoid present and future liability. LTL

was not filed in North Carolina by chance. It was the combination of a strategy that had been referred to as the "Texas Two-Step." As a result of the filing, the phrase "Texas Two-Step" is not only known as a country dance, it is now a buzz word in bankruptcy and business vernacular.

This Court recognized the extraordinary scope of LTL on numerous occasions including in its opinion in LTL where it denied the motion to dismiss and entered a broad injunction. Its extraordinary scope was recognized later in proceedings when the Court allowed the direct appeal of the orders denying the dismissal and the injunction to the Third Circuit.

Let's assume for a moment that the mass tort attorneys who represent talc claimants, because of their lack of familiarity with the bankruptcy matters, did nothing but instead waited for the appointment of a committee. Can we say with any certainty that this case would have been transferred to New Jersey? Can we say with any certainty that the broad injunction requested by the debtor in North Carolina would not have been granted?

THE COURT: So I have you all to blame.

(Laughter)

MR. ABRAMOWITZ: Of course not.

Due process is not just a buzz word. Due process embodies the fundamental principle that at the very least there should be safeguards that entitle a party's rights to be

meaningfully heard. There were over 38,000 talc victims who were claimants in this case, some of whom as this Court has recognized are on their death beds suffering from ovarian cancer or mesothelioma. Someone had to step up to the plate to protect their interests, and the attorneys for the claimants did just that.

Extraordinary cases often require extraordinary efforts. Between October 14 and November 12, for a period of 20 days, no committee was in place. The claimants I represent could not have provided duplicative services that the committees ultimately provided because the committees had not yet been formed.

The services provided by those attorneys are outlined in the certifications attached to the motion. The certifications reflect that a coordinated effort was undertaken by the movants. There are no certifications challenging or contradicting those certifications and, as such, the nature and extent of those services are unchallenged. We maintain that we have met our burden in terms of the nature of the services rendered and that the services that the claimants rendered substantially contributed to the case.

As stated in its brief, the debtor views this case through the prism of whether the services aided the reorganization. Rhetorically, what does that mean? That if a party opposes a debtor's reorganization efforts, that party

should not be paid, even if the services are determined to have been at a substantial benefit to the estate? That mantra of whether the services aided the reorganization is not the law.

Substantial contribution services have been awarded in many cases where there were no ultimate reorganizations, including motions for conversion, appointments of a receiver, and other instances that are referred to in our brief.

The claimants primarily address three significant issues: First, the transfer of venue; second, the injunction; and third, the dismissal of the case. These were argued since the inception of the case. Venue for this case was transferred from North Carolina to New Jersey.

Regardless of who initiated the process for the transfer of venue, the claimants participated in the process at the Court's invitation and their efforts are a part of the record. Importantly, not only were their findings necessary and appropriate, but the pleadings and arguments of the substantial contribution claimants afforded the Court a broad and apparently consensus view of the entire creditor body.

These efforts were not duplicative but rather they were cumulative in effect, which was no doubt important to the transfer of LTL to this district. That transfer directly benefitted the debtor and all parties as this district was a more convenient forum for the parties in light of the debtor's operations, corporate ties to New Jersey, the location of the

MDL cases, and other talc-related cases that were pending in New Jersey.

Clearly, the claimants' advocacy of transferring venue was not serving the individuals of a client or a firm. The initial broad injunction requested by the debtor in North Carolina was limited by that court in large part due to the efforts of the substantial contribution claimants in opposing the debtor's request for injunctive relief. Again, this was in the absence of a committee and conferred a benefit to all creditors.

It was only after that opposition of the substantial contribution claimants following the debtor's filing of the emergency motion seeking extension of the automatic stay that the Court required the debtor to follow the bankruptcy rules and commence an adversary proceeding to obtain a TRO and preliminary injunction.

Additionally, although the North Carolina court initially declined to extend the injunction to non-debtors and though ultimately it did so, it limited that injunction to just 60 days. And, finally, as requested by my clients and the committees appointed afterwards, the case was dismissed by the Third Circuit. The claimants set the groundwork for the dismissal and later passed that torch to the TCC once it was in a position to take action.

All of the initial steps taken while the case was

pending in North Carolina including establishing the factual record and legal arguments that were built upon as the case progressed and preserving the rights of the talc creditors until the TCC was in place to do so substantially contributed to the motion to dismiss and the ultimate decision by the Third Circuit to dismiss the case.

As stated in the unchallenged certifications, the discovery included depositions, elicited witness testimony, and exhibits utilized by the substantial contribution claimants and their professionals during the hearings conducted in North Carolina. They became a part of the record of the bankruptcy case.

They were referenced and cited in numerous court filings including motions opposing the preliminary injunction and for dismissal. They were subsequently used at the dismissal hearing, and they were made a part of the appellate record which formed the basis for the proper resolution which was dismissal of this case.

The actions undertaken by my clients are in line with the Third Circuit's articulation of the underlying policy behind the allowance of substantial contribution claims. That policy (indiscernible) allows compensation for a creditor's efforts and substantially contributing to a bankruptcy to promote meaningful credit participation in the reorganization process.

The Third Circuit has explicitly endorsed this view while emphasizing the need for the creditor effort to be substantial, to be compensated, noting that these provisions "represent an accommodation between the twin objectives of encouraging meaningful creditor participation in the reorganization process" and "keeping fees and administrative expenses at a minimum so as to preserve as much of the estate as possible for creditors." That's from Lebron.

That is exactly what happened in this case. The dangerous precedent that the debtors allude to in its brief is unsubstantiated in this case. My clients' efforts were directed to all of those issues at the outset of the case before any committee was in place to protect the 38,000 claimants.

We are looking for payment only for that 29-day gap period. Clearly, as stated, there was no overlap with the committee's efforts, and there was no one else in place to challenge the debtors solely on behalf of the creditors.

If the TCC were in place during the pre-TCC period, it would undoubtedly have had a right to seek compensation for the same services rendered by the substantial contribution claimants during the pre-TCC period, a fact conceded by the debtor as it complains of an alleged duplication of services and payment of significant amounts to professionals retained by the committees.

There is, I recognize, a higher standard for my clients, and that is do the services provided substantial contribution to the case. I have submitted approximately or over 1,500 pages of exhibits including certifications that reinforce the premise that they did. Many of those exhibits were a part of the record that ultimately led to a dismissal of this case.

Notably, the debtor's professionals billed and largely sought payment of legal fees in the amount of approximately $4,600,000 during the pre-TCC period. The substantial contribution claimants who I represent seek an allowance of claims of approximately $1.9 million for the same period which includes legal fees and expenses. In somewhat of an anomaly, the debtors and the professionals have billed and been paid ten of millions of dollars, yet, their efforts in the LTL cases have resulted in two dismissals.

The substantial contribution claimants coordinated with their efforts to avoid duplication of services and, as stated in the pleadings, believe that the inclusion of that time would not have been considered appropriate for this motion. Their efforts served as an important building block for the committees that were subsequently appointed with the authority of the U.S. Trustee and this Court.

Metaphorically, when chopping down a tree, initial substantial chops are necessary to achieve an end result. And

those efforts should be rewarded. For all of those reasons, we request that this Court approve the application. Thank you.

THE COURT: All right. Thank you, Mr. Abramowitz.

Other counsel? Mr. Pfister.

MR. PFISTER: Yes. Good morning, Your Honor.

THE COURT: Good morning.

MR. PFISTER: Thank you for allowing me to appear remotely today. Rob Pfister from Klee Tuchin on behalf of the Aylstock firm.

Your Honor, I join in Mr. Abramowitz's argument and in the briefing. And I would just point out a few things. Number one, the law is clear that courts are to assess substantial contribution claims based on the record in light of the Court's experience garnered during the course of the administration of the debtor's case. That comes from the Grasso case from Pennsylvania.

And the Third Circuit has emphasized that a substantial contribution motion presents a question of fact and that the bankruptcy court is in the best position to perform the necessary fact-finding here. I think that's important because the facts, as Mr. Abramowitz noted, are essentially unchallenged. That is, the certifications that he submitted, the certifications that are appended to the Aylstock motion.

The factual record there, and I believe the Court's experience in presiding over these proceedings will reflect

that the claimants played a -- will reflect, pardon me, the role that the claimants played in the case. And we're certainly confident to rest on the Court's assessment of the record and the unchallenged nature. That is, no one has indicated that any particular time or item is inappropriate or not appropriately incurred.

Instead, the challenges that are raised in the opposition to the motions are based more on broad-brush principles including a notion that there cannot be a contribution, pardon me, substantial contribution when the applicants' efforts result in the dismissal of the case.

And I think the legislative history on that is clear that creditors are sometimes -- sometimes creditors are best served by reorganization, and I think a paradigmatic substantial contribution motion is one where a plan has been effected and confirmed and a benefit has been conferred in that respect, i think. But that does not mean that a creditor's efforts to secure the dismissal of a case when that is in the best interest of creditors, that that can also satisfy the statutory standard for substantial contribution. And, once again, at bottom, this is a question of fact that is committed to this Court's discretion.

And then the final point I'll say is let me echo Mr. Abramowitz pointing out that a key aspect of this case both in its early phase in North Carolina and in later proceedings,

both at trial before this Court and on appeal in the Third Circuit, was the unanimity of the creditor body. And that was a fact that was remarked upon by both the North Carolina bankruptcy judge, Judge Whitley, and at the Third Circuit that creditors were unanimously opposed to the debtor's "Texas Two-Step" maneuver.

I think that's an important fact, and i think that a divided creditor body or a creditor body that was rowing in different directions would have presented factually a very different case. Obviously, the legal issues in terms of is there cause for dismissal, those legal issues would be the same. But the factual context and the factual record supporting those legal issues I think would have been quite different.

So with that, Your Honor, I will cede the podium.

THE COURT: All right. Thank you.

Mr. Pfister, let me -- I can direct my question to you or Mr. Abramowitz. In reading -- actually, I think Mr. Abramowitz quoted this sentence. I'm looking at one of the briefs, and it just reemphasized the purpose of Section 503(b)(3)(D) is to further the objective of encouraging meaningful creditor participation in the reorganization process.

Now in 20 odd months, I could say and for those remote, it's the opposite where this side of the room I don't

think was advocating for a reorganization process. In fact, in fairness, I believe every time Mr. Molton got up to speak, he prefaces his statements with, Judge, for the record, we think dismissal of this case is inappropriate, something along those lines.

In fact, mediation wasn't going to start until after the motion for dismissals were decided. That was pointed. Can someone point to me case law not with respect to conversion because that's still the bankruptcy process at work but where substantial contribution was found appropriate for efforts appointed at dismissal? I think it's fair to say that there was unanimity in that the interest of individual clients would be furthered by dismissal of this case and access to the jury -- the tort system and the jury process.

That's working for individual clients, not for an estate, not for a reorganization purpose. Not for a bankruptcy purpose. So is there case law, is there support in this situation? Mr. Pfister or Mr. Abramowitz or anyone else wish to address those comments?

MR. PFISTER: I'll let -- I can't tell if Mr. Abramowitz is about to speak, but I'll let him --

THE COURT: He's ducking.

MR. ABRAMOWITZ: No.

MR. PFISTER: Oh, he's ducking.

(Laughter)

MR. PFISTER: Well, so for the record, Mr. Pfister. Let me answer that in two ways, Your Honor.

In terms of a specific case that deals with something outside the reorganization process, Your Honor is correct that those tend to focus on conversion. And conversion and dismissal certainly are different.

But with respect to what Your Honor is positing as the question of does this meaningfully contribute to a reorganization effort, I don't think conversion or dismissal, I don't think in this narrow circumstance that there's much difference between those because in a conversion, right, so the Court read from the Lebron quote which Mr. Abramowitz quoted about a substantial -- to encourage creditor participation in the reorganization process.

Yes, that is what Lebron talked about and the case that it was quoting talked about was in the reorganization process. That said, the legislative history, as I indicated, indicates that the standard under the statute is did the creditor make a substantial contribution to the case, not to the reorganization process.

So, first of all, the Court's comments about reorganization process, those weren't tied specifically to the statutory language which is to the case. That's one point. And then the second point I would make is creditors -- so there are different ways to participate in a case, and the fact that

a reorganization does not ultimately result tells us two things.

Number one, it tells us that the creditors were correct in their assessment that the case presented cause for dismissal or conversion because, again, remember 1112(b), the statute that the Court applied and that the Third Circuit applied, that statute speaks of for cause, the court may convert -- may dismiss or may convert or may appoint a trustee.

So the inquiry is the same. It's the cause inquiry. And whether that results in conversion, which does not result in the reorganization, right -- conversion results in a liquidation because you'd convert to Chapter 7 -- or whether it results in dismissal. In both instances, it does not result in a reorganization, yet it still is a factor in terms of creditors' contribution to the case.

So short answer, I don't have a case about dismissal specifically. Longer answer, the cases that do talk about awarding substantial contribution outside the context of a reorganization, those cases are on point because it's just the remedy was different, right. One remedy is to move to Chapter 7 liquidation. Well, getting a debtor who shouldn't be reorganized out of Chapter 11 and into Chapter 7, everyone agrees that can be a substantial contribution.

So getting a debtor who shouldn't be a debtor out of Chapter 11 and out the door can also be a substantial

contribution.

THE COURT: All right. Thank you, Mr. Pfister.

Mr. Abramowitz?

MR. ABRAMOWITZ: Yes. There are a couple of items.

First of all, I think you have to look at the entire case. The entire case and the services that we're requesting are not just with regard to dismissal. I mean we also had a situation at the outset of the case where we addressed the venue and we also addressed the issue of the injunction. So it's not as if you can isolate that and say that because of the issue with regard to the dismissal, we should not be entitled to payment. That's number one.

Number two, I have been in cases where there have been Chapter 7s where there have been substantial contributions raised, issues raised, and it has been granted. Now, granted the circumstances are far different, but the substantial contributions have to be viewed within the circumstances of the case.

Now I wasn't ducking. I was reading my brief, which --

(Laughter)

MR. ABRAMOWITZ: -- which you may feel is ducking. But I would note, Your Honor, that we did a little research on this to look for specifics. And we did find a case, In re -- and this cites In re Alumni Hotel Corp which is 203 B.R. 624.

It's an Eastern District of Michigan case.

And it states, basically, indeed, legislative history merely defines substantial contribution negatively as not requiring a contribution that leads to confirmation of a plan. For many cases, it will be a substantial contribution if the person involved uncovers facts that would lead to a denial of confirmation. And that's from the Encyclopedia Intern, 1998 WL 801898.

And I think, again, it would be too constrained. I mean reorganization is a process. It says the process. Does it mean that it has to be a successful reorganization? Does that mean that if you oppose the reorganization, that you should not then be entitled to substantial contribution compensation? That's too narrow a reading. And it seems to me that you have to look at the entire case. And in this case, I mean this is an extraordinary case. For me, it's going to be the case of a lifetime but then again, I probably will have a short future life.

(Laughter)

MR. ABRAMOWITZ: But I'm just suggesting, Your Honor, that in light of this, I think you have to look at the case and what happened. The real issue in this case is that there is a gap period. There is a gap period when somebody files until when a committee is appointed. If you're saying, well, you shouldn't have substantial contribution in a case like this

during that period, you're tying people's hands. If this would have been a committee, they would have been paid.

The Code doesn't provide for that gap period except for administrative expenses which we're seeking in this case.

THE COURT: But wasn't the U.S. Trustee's Office active during that period? Back there it was the Bankruptcy Administrator.

MR. ABRAMOWITZ: Can I ask a question about that? And I don't mean to be rude. I know the U.S. Trustee's Office, okay. The U.S. Trustee's Office is not charged with representing the interests of 38,000 claimants. They are charged with administering the case, and that's what their responsibility is.

They didn't step up and file the pleadings that we filed in the case both with regard to the TRO, with regard to the injunction. They didn't take the depositions. Let's face it, they don't have the manpower to do it. We had to drop everything. You saw the 1,500 pages. You saw the depositions taken. You saw the involvement of attorneys that are here today that are on the committee that pick up the mantle that did the work. That somebody had to do this in order so that it's not a fait accompli.

It's sort of like watching yourself cannibalized once the 30 days goes by. somebody has to do something, especially in an extraordinary case. There were substantial services

here. There were depositions, there were notices to produce, there were arguments. You had experienced counsel. You had the Otterbourg firm involved not knowing whether they would ultimately be in the committee or not but they understood that they had to be involved at the outset.

If you look at the pleadings, these are not pleadings with just, well, we object. These are pleadings that go on and on about the case and the objectives in the case. They were ultimately utilized as building blocks by the subsequent committees in this case. And I think to suggest that it should only be awarded in the case of a reorganization, with all due respect, would be myopic. I think that you have to look at this case not only microscopically but telescopically.

And I think there's another aspect of this case which is very important. This case is going to send a message that if you're going to be doing cases like this, you can't expect to just steamroll a case with no opposition. That's really what this is about. And we provided that substantial contribution to hold the fort until the cavalry came when the committee was appointed. Thank you.

THE COURT: Thank you, Mr. Abramowitz.

Mr. Block?

MR. BLOCK: Good morning, Your Honor.

THE COURT: Good morning.

MR. BLOCK: Jerome Block from Levy Konigsberg. We

are one of the substantial contribution plaintiffs. I want to just bring everyone back to October, for me, it was October 13th or October 14th, 2021. We had heard rumors shortly before that that this could happen, that one of the wealthiest companies in the world could do some type of divisive merger and try to stop all these cases in the bankruptcy system.

Frankly, I was one of the people that said that will never happen. J&J would not take the reputation and try to use the bankruptcy system with it widely known that it's one of the wealthiest companies in the world. So I remember the shock of seeing the bankruptcy filing, and I remember thinking what are we going to do. I saw the notice of the first-day hearing, and they had this planned, like Mr. Abramowitz said.

I mean Mr. Kim over here, they submitted a first-day declaration for him many pages, many paragraphs. That was his sworn testimony, and that was the basis for LTL asking Judge Whitley right out of the box for the relief it wanted, okay. The U.S. Trustee's Office did not cross-examine Mr. Kim at the PI hearing or take his deposition, okay. I cross-examined Mr. Kim at that hearing. Mr. Satterley and others took Mr. Kim's deposition in North Carolina. And all of these other things had to be done.

You did make one comment that I just want to -- I'm not sure exactly what was behind it, but I want to respond to it. You said, well, this is the lawyers or claimants basically

representing their clients, okay. Let me respond to that. When we took on the contingent fee representation of cancer victims against one of the wealthiest companies in the world, we had no reason to foresee that we would ever be litigating against this company, okay, with the litigation managed by Mr. Haas in bankruptcy court.

The invoice that I'm seeking reimbursement from, for example, from Mr. Massey only arose because of a bankruptcy which was filed in bad faith, all right. So we were litigating these cases for years. I never had to hire an expert in bankruptcy and constitutional law, Mr. Massey, because that's not what me, what my firm or my clients signed up for, right. We sued one of the largest companies in the world, clearly solvent, clearly able to pay its bills as they come due. And they're the ones that filed the bankruptcy that now has been twice adjudicated to be in bad faith, okay.

And what they're trying to do is take an expense that we should have never had to undertake, here Mr. Massey's professional services that we paid for to protect creditors. Similarly, the MDL group had litigated these cases long and hard for years. They never had to hire Otterbourg, right. They never had any reason to believe that they would need to hire bankruptcy lawyers to fight one of the wealthiest companies in the world in bankruptcy court.

Same thing with the Maune Raichle firm, right. They

had to hire an expert bankruptcy law firm in North Carolina. What are they even doing in North Carolina against Johnson & Johnson? Could they have ever foreseen Maune Raichle when they entered contingency relationships with cancer victims that they would be in bankruptcy court in North Carolina and have to hire Mr. Waldrop, a former bankruptcy judge, to guide us through the process?

So what a mockery the proceedings would have been in North Carolina without our firms, okay, and the lawyers we had to hire stepping up for that 29 days to have a fair proceeding, right. I mean you have the transcripts, Your Honor. Witnesses were called. Witnesses were cross-examined. Mr. Gordon made his arguments. He presented his PowerPoints. Arguments were made in response. And a fair result of the North Carolina proceeding from that time period resulted, okay.

The injunction was more limited than Mr. Gordon and LTL had requested. And the case was transferred to New Jersey, which was a monumental part of this case. And, Your Honor, you know it's a hard question when you ask, well, how do we contribute to the reorganization, right, because really what we know now and what we always said when we, the substantial contribution claimants said then is true now, that LTL never had the right to come into bankruptcy court and seek to reorganize.

THE COURT: But don't we operate generally under the

American rule where each client pays their own fees? And, in fact, even under 503(b), it's a presumption that you're providing services for the benefit of your client. You have to rebut that presumption. And I recognize that --

MR. BLOCK: Sure.

THE COURT: -- you have to undertake additional fees and costs.

MR. BLOCK: Sure. But here there's a mechanism. There's a mechanism, and that's why it's a substantial contribution motion. The mechanism is here. So did we make a substantial contribution to the reorganization process, okay.

So as an end result, they were not entitled to reorganize in bankruptcy court. The Third Circuit said that, okay. So that has been adjudicated. This company was not entitled to a reorganization in bankruptcy. That is what the Third Circuit said in LTL1, okay.

So did we contribute to the reorganization process, okay. The process was everything that led up to dismissal. And certainly, what we did in North Carolina hot this case in LTL1 in the right courtroom, the proper courtroom, and ultimately led to dismissal which I think as a bankruptcy matter was the equitable and just result as set forth by the Third Circuit.

So, Your Honor, for all these reasons, we would ask that you view this unique case under these unique circumstances

and say what would have happened, what would have happened if these creditors did not have that representation for those 29 days and are these substantial contribution claimants entitled to be reimbursed for that limited time period. And I would say the answer is yes, and I would ask you o grant our motion. Thank you.

THE COURT: Thank you, Mr. Block.

From the debtor?

MR. PRIETO: Good morning, Your Honor.

THE COURT: Good morning.

MR. PRIETO: Dan Prieto of Jones Day on behalf of the debtor.

Your Honor, from our perspective, the movants here are seeking unprecedented and extraordinary relief. The relief is unprecedented, and I think you heard -- I think your questions go to this because to our knowledge, no court has ever granted a substantial contribution claim to a creditor or an informal committee in a case that's been dismissed.

And I think you asked questions about conversion. Well, conversion is different. There's still an estate. There could be reasons to convert that could maximize the recovery for claimants. This is a situation where they were seeking ultimately dismissal and ultimately to frustrate and derail the restructuring.

And I think that the lack of precedent makes sense

because a substantial contribution claims are rarely granted and are meant to compensate a creditor for services that directly and materially contribute to a reorganization. You heard that already today. And from my perspective, that's just not possible to show when the work was intended to stop the restructuring entirely.

The relief is also extraordinary from my perspective, Your Honor, because it seeks compensation for work that was unnecessary -- and I'll address that -- unsuccessful, or pursued by the Bankruptcy Administrator or the Official Committee of Talc Claimants. And there I'm referring to the motion to dismiss.

In fact, LTL expended over $22 million for services provided by 12 different professional firms to the official committees in litigating the preliminary injunction and dismissal issues during the three-month period only from November 2021 to January 31st, 2022.

And the claims are correct that the committee came after their work, but the point we're making is that they had to redo the work and we had to spend an enormous amount, tens of millions of dollars having them do that. So under those circumstances, they can't be substantial contributions. Their work had to be redone.

Your Honor, to make matters worse, one of the movants here is actually seeking substantial contribution after the

official committee was appointed and for work that the committee itself was already doing, and that's the Aylstock firm, Your Honor, seeking with respect to its work on the motions to dismiss, as well as the appeals.

So, Your Honor, we believe granting the substantial contribution request would set a dangerous precedent. It would encourage creditors to be more litigious and perform excessive work in the Chapter 11 case to pursue their own self-interests because of the possibility of obtaining reimbursement of their costs as substantial contribution.

And I'm not suggesting the movants didn't have every right to pursue their own interests in this case and to spend money on professionals to advance those interests. But under the Third Circuit precedent, Your Honor, they are not entitled to have the debtor pay for those efforts.

So, Your Honor, obviously, we filed an objection laying out the factual predicates for our objection and the standards. But I do want to briefly highlight the standards here because they're so exceedingly difficult to satisfy, and I think it's worth underscoring.

As an initial matter, the movants have the burden to show by a preponderance of the evidence that they've made a substantial contribution to the debtor's estate. Courts have held that "administrative expenses compensation based on a substantial benefit to a bankruptcy estate must be strictly

limited to extraordinary creditor actions that led directly to tangible benefits to the creditors, the debtor, or the estate." That's the Summit Metals case, Your Honor, out of Delaware.

Courts have said that substantial contribution claims should only be granted in "rare and extraordinary circumstances." That's the RS Legacy Corp case.

And the Third Circuit has held that services provided by a creditor or unofficial committee "are presumed to be incurred for the benefit of the engaging party and are reimbursable if but only if the services directly and materially contributed to the reorganization." That's the Lebron case you heard about earlier.

The Third Circuit in Lebron went on to find that "the benefit received by the estate must be more than incidental one arising from activities the applicant has pursued in protecting his or her own interests. Creditors are presumed to be acting in their own interests until they satisfy the court that their efforts have transcended self-protection." That's on Page 944 of the Lebron case.

So obviously here, Your Honor, the standard is very difficult to satisfy under the Third Circuit. It requires very specific evidence of clear and direct benefit, not incidental, and beyond their own self-interests. So what do we have here in terms of the services they provide? As I read their briefs and I heard their argument today, they're focusing on four

areas. So I'll only briefly go through why I think none of those areas where they provided services actually provided any benefit, much less a substantial one.

The first areas, and you didn't hear much about it today but they talked about this in their briefs, was the work they did contesting the first-day motions. I think Mr. Block did refer to sort of Mr. Kim's declaration and the relief we sought on the first-day and how they had to sort of rush into court to oppose that.

Well, Your Honor, as the movants themselves admit, the first-day motions filed in LTL1 sought routine relief, routine for a mass tort case. And on top of that, Your Honor, as is typical in North Carolina Bankruptcy Court, the first-day relief was sought subject to specific reservations of rights for the official committee and the future claimants representative once those entities were formed or appointed to challenge the orders if they thought there was issues with those orders.

Nevertheless, the movants objected. In fact, both the PSC and the meso committee filed duplicative objections to the first-day motions. And I think in their brief, I think in their reply, they sort of suggest, well, you may be right about those motions, but you guys filed a really lengthy complicated informational brief, and we had to address those right away.

Well, why? The informational brief wasn't seeking

relief. It was our position that TCC, once formed, could take the opportunity to address that. There was no urgency. And if they felt any need to do it immediately, that's because of their own self-interest, not because the case required it.

So, Your Honor, I think with respect to the first-day motions, to me, there's clearly no benefit to the estate for this work. The objections were denied. They were unnecessary because the relief sought was routine, and the rights of the TCC and the FCR were fully preserved in accordance with North Carolina bankruptcy practice.

So let me turn to the PI request, the 2021 PI motion. Your Honor, as we explained in our objection, a preliminary injunction and an extension of the state in mass tort cases is routine. I know they don't like that, but it's been granted in multiple, multiple cases. And, in fact, and I've been involved in many of these in many cases where the claimants actually agree to the relief on the first-day at least for a short period of time to permit the official committee, once formed, to weigh in on the issues.

And in this case, when we were in North Carolina, there was actually recent rulings as Your Honor is probably aware where the North Carolina court had addressed similar circumstances involving debtors that were formed in divisional mergers that indicated the relief we were seeking was appropriate. Nevertheless, the movants objected, took a bunch

of emergency discovery, and ultimately both the North Carolina bankruptcy court and this court had to overrule those objections.

Now it's true as the movants point out that the North Carolina Bankruptcy Court did limit the preliminary injunction that we sought to an initial 60 days. But as Your Honor recalls, that was not because the court was concerned about the objections that were being lodged. It was because the court was transferring the case to this Court and wanted this Court to have an opportunity once the Court had a chance to take a look at the issues to rule as this Court saw fit.

And I would further point out that even when the Third Circuit issued its dismissal order, it did not address the PI or otherwise find it inappropriate in terms of the standards of the PI.

So, Your Honor, what do we have? We have unsuccessful challenges to the preliminary injunction motion that simply caused delay and it caused the debtor to incur significant and unnecessary professional expenses. So this work did not benefit the estate, Your Honor. Quite the opposite.

All right. So let me address the transfer of the case to this Court. Your Honor, as we laid out in our objection, the North Carolina Bankruptcy Court sua sponte raised the issue of venue transfer and entered a show cause

order. Then the Bankruptcy Administrator filed a motion to support venue transfer, and four other motions or joinders were filed by representatives of claimants who are not the movants or otherwise seeking substantial contribution. And the TCC even, once formed, filed a letter supporting transfer.

And I guess the final point is all those transfer motions were largely duplicative of the Bankruptcy Administrator's transfer motion. So this is not the type of services or work that I think constitutes extraordinary activity that justifies substantial contribution, especially given that other parties were already pursuing that relief including the Bankruptcy Administrator and there was duplication that occurred.

And then we get to the dismissal litigation. I think most of the claimants are arguing and I think they argued today that basically, their work in connection with the PI set up somehow or set the stage for or were the predicates for the TCC's motion to dismiss. And this to me is almost like they're trying to attempt to justify the measures they took in connection with opposing the PI saying, well, we didn't win the PI objections, but it had some incidental benefit down the road with respect to the motion to dismiss that was later brought because the work we did was relied on to some extent.

Well, Your Honor, I would say as an initial matter, and I've already covered this, but work done in connection with

the PI -- well, the PI didn't really have much impact, I don't believe, on the dismissal motion. After the TCC filed its motion in December, and I'm sure Your Honor recalls this because of all the telephonic conferences we had, the TCC engaged in extensive discovery that expanded and recreated the work done at the PI hearing. So really to the extent there was a benefit, it was very minimal in my view, and the debtor had to pay for all that work basically to be redone by the TCC which is precisely why the claimants here should have waited.

Further, achieving dismissal does not substantially contribute to the successful resolution of the case. In fact, Your Honor, we now know with the benefit of hindsight that most -- the vast majority of the claimants don't want dismissal, didn't want dismissal. And this Court found that confirmation of a plan that equitably and efficiently satisfies the talc claims through trust procedures would be more beneficial than a return to the tort system for most claimants. So under those circumstances, Your Honor, I don't see how this case.

And then the final point I wanted to make with respect to Aylstock, we didn't get into this too much yet this morning, but obviously as Your Honor probably is aware, not only are they seeking substantial contribution for the 29-day period, but they're seeking it throughout the entirety of the first case during the period of time that the TCC was already formed.

And, Your Honor, we think that the work it did in connection with the motions to dismiss, the 2021 case and the appeals, could not have benefitted the estate because the TCC and its ten law firms were already pursuing those matters at the expense of the debtor's estate, and they included appellate counsel that they had retained to deal with the appeal.

Again, Aylstock is free to pursue its own interests if it did not trust the TCC to litigate those issues in the way it thought most appropriate. But it's not entitled to have the debtor reimburse it for that work.

So let me just see if there's anything in terms of reply points, Your Honor, I wanted to cover. I think there were some arguments about, well, you know, there was a gap period and it was absolutely critical that somebody fill that gap period. Your Honor, that's true in every case. There's always a gap period. That's not a basis to say, well, because we were active during -- before the committee was formed and, therefore, we must by definition get substantial contribution. As I've already covered, the activities they were doing in my view, Your Honor, were not necessary and were unsuccessful. So that's not a basis for substantial contribution.

The other side I think in their reply and again today said, well, those duplication arguments doesn't make any sense because we obviously preceded the TCC, and I think I may have covered this already. But the point is that the services had

to be repeated by the TCC. So there's really no benefit in having them done at a time when they were unnecessary to be done when the TCC, when formed, would have to do the work again.

I think there's been arguments that the case is so complex, so high-profile and involves the debtor with significant assets that that somehow converts their activity into being justified. That's not the standard. It doesn't matter how much resources we have. That's not the -- the standard is did they directly and materially benefit the reorganization case and do something out of the ordinary that requires reimbursement. They haven't met the standard, Your Honor.

And then the final point I'd make is, and Your Honor mentioned this, the American rule. I think that is a very good analogy here, and the irony is under their rationale, the company, LTL and J&J, should be reimbursed for all the times we won in the tort system which is most of the time. We didn't get those fees reimbursed. And I think they're trying to basically use the substantial contribution standards to basically convert it into some different rule where they get their litigation costs reimbursed. That wouldn't be fair, Your Honor.

So for all those reasons, Your Honor, I'd ask you to deny these motions.

THE COURT: Thank you, counsel.

U.S. Trustee? Ms. Bielskie, good morning.

MS. BIELSKIE: Good morning, Your Honor. Lauren Bielskie with the Office of the United States Trustee. And I'll just state -- start by saying it's different than the bankruptcy administrator that exists in North Carolina. I know Your Honor knows that, but just to be clear.

The U.S. Trustee filed an omnibus objection to the pending substantial contribution motions in light of the statutory requirements of Section 503(b) and the Third Circuit's interpretation of the exacting standards under the statute. I won't restate the standards that are in the papers and that the parties have already set forth today.

But we think it's helpful to look at the request in two separate categories: fees incurred for the period between the petition date and when a Committee was appointed and fees incurred for services after appointment of the Committee. And this is given the role that the Committee and its involvement in the case once it was formed.

For the post-petition, pre-Committee period, it stands to reason that services performed in this time frame may have benefitted creditors as a whole, because there was no Committee yet and significant activity was happening in the case. This is a case that came into bankruptcy with a unique set of facts, including the Texas two-step and a well-known

parent entity. There's nothing routine about this case.

The activity included first day motions, venue, preliminary injunction, and others. And creditors could not just sit idly by. But for the period after the appointment of the Committee, and even two Committees for a period, the applicant's ability to meet its burden to show services were provided for the benefit of all parties that directly, significantly, and demonstrably benefitted the estate and were not duplicative is a much bigger hurdle to overcome.

It is not clear from our review that the applicant seeking the post-Committee can meet that burden. And so we leave the movants to their proof to satisfy this Court that an administrative expense is warranted. Thank you, Your Honor.

THE COURT: Thank you, Ms. Bielskie.

Any replies?

MR. ABRAMOWITZ: Your Honor, in their reply -- or response this morning, they said, well, this -- parts of this -- this is just an ordinary case. Well, at least one aspect of the case was with regard to the injunction, which I'll get to in a minute.

The one question that was raised by both you and by my adversary has to do with the Lebron interpretation. Bear in mind that the Lebron case is a 1994 case, Third Circuit.

There's also another Third Circuit case, though, that is S.S. Body Armor, which is 961 F.3d 216, which is 2020. And

it says, "The bankruptcy court permits the payment of administrative expenses, including the reasonable compensation for professional services rendered by an attorney of an equity security holder in making a substantial contribution in a case under Chapter 11."

If you look at the Code, the Code itself doesn't say "and a reorganization." It talks about particular chapter, in Chapter 11. It doesn't say that it has to be a reorganization. And I would submit, Your Honor, that to restrict it to just a reorganization, as I said before, is a narrow reading. I'm not going to repeat what I said earlier.

I would like to respond to a couple of the issues that were raised. First, they said that what was done by the claimants were unnecessary, unsuccessful, and ultimately were pursued by the Committees. Well, I'd really feel much better about that, because if I had a case like this, and I represented, let's say, a thousand claimants, I'd say, don't worry, there's nothing we have to do. What we would be doing is probably unnecessary. We might not even be successful. Let's just trust them.

Because that's really what is -- this case comes down to. The whole adversary system is to cut the deck. Now, you indicated, well, the American system doesn't provide for payment for attorney's fees in instances. That's true. But the Bankruptcy Code is a part of the American system of law and

carved that out and said there are circumstances, however, where there should be payment. And this is one of them.

This is a situation where when the motion was made to transfer, we represented -- or my group represented the mesothelioma claimants and the ovarian cancer claimants, 38,000 claimants. That's a real consensus that the Judge looked at and said, yes, they are in favor also. And that must be given some weight.

The fact that the proceedings were screwed up, to say the least, in North Carolina by motion as opposed to adversary proceeding, is not insignificant. There are rules there. We picked that up. The injunction was entered 60 days -- for 60 days. We understand that it was a hold until it was transferred. But this is a situation where we believe that they were not even entitled to an injunction, because each case has to be looked at on its own facts.

It's very easy in retrospect to say what could have or what should have been done. I can tell you that if I were in my office representing -- or being a mesothelioma or ovarian cancer advocate, and I was told that J&J has filed for a -- or LTL filed for bankruptcy and there's an injunction being sought to extend it to J&J, I would be helpless. The first thing I would probably have to do is to have to figure out how do I protect not only my clients but the situation.

Because what we're having a problem is we're

conflating the situation that if my client has benefitted, obviously it's being done for your client. Well, the transfer, for example, the Court said was being done for the benefit of everybody. The Court basically said that. It's not just us. It's everyone. You have a situation also with the injunction that it's not just my client; it's the 38,000 claimants.

So we're in a situation, Your Honor, where I -- again, I don't think you can look at this myopically. This was an extraordinary case. It's one of the biggest, if not the largest, case ever filed.

We had to do something during that gap period. And to say that, well, it was duplicative, we had to -- that what you did had to be redone, where in the certifications does it say that what we did was not used or redone? Our documents were used in the underlying case as well as on the appeal. There's just a conclusion by saying, well, whatever we did had to be redone by the committees.

That's not true. We had depositions. We had exhibits. Those were a part of the record. They may also have been a part of the record that was included by the various committees with regard to the appeal.

But what we did was a building block, and it was an essential building block. We were able to give them a head start on a lot of this, which was a substantial issue in this case and resulted in a ultimate dismissal of this case. So in

essence, we gave those committees a substantial benefit by giving them a head start in a situation where they didn't have to come in cold 30 days later to figure out what they wanted to do in terms of the case.

Your Honor, I believe that -- I strongly believe that this case mandates a substantial contribution for the claim -- the claimants that I represent during that 29-day gap period. As the United States Trustee has already conceded, it didn't sound like there was an objection expressed by them with regard to that period.

And it's very unusual in these cases that you don't hear an objection on substantial contribution claims in Chapter 11s or Chapter 7s from the United States Trustee. And there is a reason. And the reason is the facts in this case are extraordinary, and the request that we're making is reasonable. Thank you.

THE COURT: Thank you, Mr. Abramowitz.

MR. PFISTER: Just a few points, Your Honor, if I may?

THE COURT: Yes. You can stay there, Mr. Block.

MR. PFISTER: Mr. --

THE COURT: Go ahead.

MR. PFISTER: Oh, I --

THE COURT: Go ahead.

MR. PFISTER: Thank you, Your Honor. Couple of

points. Mr. Prieto said that I believe, quote, the vast majority of claimants don't want the case dismissed -- or didn't want the case dismissed.

Well, Your Honor, we're here at this moment in the LTL 1 case. And in the LTL 1 case, there was creditor unanimity on these points. And I think that creditor unanimity was, in fact, a key point here. It was only in the LTL 2 case that an allegedly different set of facts was present. But in terms of what the Third Circuit -- what happened and how the Third Circuit ultimately ruled in LTL 1, there was, indeed, creditor unanimity there.

Second, Mr. Prieto said that if individual creditors took action after a TCC -- the TCC was formed, that that meant that they didn't trust the TCC or indicated, you know, they could do -- they could take action if they didn't trust the TCC. Well, and the UST makes a similar point about the adequacy of the TCC.

So let me be very clear that TCC's work in this case, you know, was exceptional, was critical and, you know, led to the result. But I think Mr. Abramowitz's analogy of the lumberjack and the axe -- you know, swinging the axe and felling the tree is a good one. If you swing the axe nine times and, you know, time number one the tree doesn't fall, time number two the tree doesn't fall, time number three the tree doesn't fall, all the way up until time number nine, and

then axe swing number ten is the one that does it, the fact that the tree fell on the tenth swing of the axe does not indicate that the first nine weren't important or that the sole responsibility or sole credit goes to the tenth. In fact, each piece is accretive and cumulative.

And then going -- then I think stepping back to this meta issue that the Court's questions touched on and that Mr. Prieto's comments touched on is about reorganization and whether there was a contribution to reorganization. Again, it's -- the statutory standard is a substantial contribution in the case, not reorganization.

But with respect to reorganization, you know, the time sought -- the time at issue in the motions is all time spent by bankruptcy lawyers, not individual tort counsel. Reorganization is a wonderful thing when it is sought in a manner and by a debtor that is, you know, consonant with the letter and spirit of the Bankruptcy Code.

That is a critical threshold question. And what happened here is a multi-year proceeding across multiple courts starting in North Carolina, then before this Court, then before the Third Circuit where facts were marshaled, law was argued, and the question was a bankruptcy question. It is, is this debtor properly in bankruptcy? Is this debtor one that can avail itself of the reorganization provisions of Chapter 11?

That's a bankruptcy question. It was argued by

bankruptcy lawyers. And it was ultimately resolved on a bankruptcy basis.

And that critical question is what this case stands for. This will be an important case for years to come. People will cite the LTL case. And it is a bankruptcy case. And it is a case about who can be a proper debtor under the Bankruptcy Code and what kinds of activities -- what kinds of debtors are eligible for reorganization.

In that regard, I think the analogy that strikes me is to the criminal law context where the Supreme Court, I think, famously back in the '30s decided a case that said, you know, it's important when you're the prosecutor -- or you're the Government. You know, you want to win. I get it. But the United States as a sovereign that brings to bear its power in the criminal enforcement context, the United States prevails whenever justice is done. And that's the ultimate standard.

Here, the bankruptcy system prevails. The proper result being reached is the key. And whether that ultimate result is a confirmed Chapter 11 plan or a conversion to Chapter 7 or an order of dismissal, at the end of the day, the right result is reached, and the folks who contributed to that result are eligible under Section 503 to make an application for administrative expense as a substantial contribution.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Pfister.

Mr. Block?

MR. BLOCK: Thanks, Your Honor. Jerome Block from Levy Konigsberg again. I have to correct Mr. Prieto on some things. Maybe in the normal course -- and I'm not a bankruptcy lawyer, but maybe in the normal course a first day hearing is pretty mundane, administrative matters, not a lot of contesting or fighting. This case, I think you know, throughout the whole case there's been nothing mundane, nothing merely administrative.

And what happened here, Your Honor, was at the first day hearing in front of Judge Whitley, LTL really, knowing that there was no committee formed, was rushing to get the relief it wanted, and including, Your Honor, they had already sent out notices to the courts where all the tort cases were pending and the lawyers, giving notice that there's been a bankruptcy filing. And not only is the case stayed against this new entity, LTL, but it's stayed against this list of hundreds of protected parties.

So even before Judge Whitley granted any relief, it was asserted by Jones Day and by LTL and sent out around the country trying to essentially shut the cases down. So we went in front of Judge Whitley on that first day. Very hotly contested first day hearing.

And Judge Whitley rightfully said, you know what, we need to have a TRO hearing like immediately. And I don't have

the calendar in front of me, but I think it was like days later. Like days later. I think I brought, you know, a -- you know, maybe two suits, and I should have brought three. Okay? Had to extend my hotel reservation.

So we then had to -- I cross-examined Mr. Kim at the TRO hearing. Didn't have an opportunity to take his deposition, because this was all emergency arguments on both sides. And the claimants, we, my firm, Mr. Massey, the Otterbourg firm, Melanie Cyganowski, Adam Silverstein, Tom Waldrep, Maune Raichle, all those firms won the TRO hearing. Judge Whitley denied the TRO relief sought by LTL. And one of the main reasons he cited in his opinion was they didn't have an agreement in the record showing that there was any agreement in 1979 about talc liabilities.

So after the TRO hearing was denied, they, a couple days later, found the 1979 agreement. They found it. You know, I'm not insinuating anything, but they didn't have it when they filed. We won the TRO hearing. And then they did some digging, and they found it. Okay? So that 1979 agreement was found because essentially we opposed the TRO, and they had to find it, because they couldn't get the relief we (sic) wanted.

We had to do discovery for the preliminary injunction hearing. Mr. Kim was deposed. A custodian of records was deposed. They put in a bunch of declarations. Mr. Kim

supplemented his declaration. They came forward with a new witness, Dr. Kuffner, who they identified as -- would testify in the PI hearing. We had to take his deposition.

We then went through the PI hearing. They produced hundreds of documents. We had to review the documents. A lot of those documents became the key documents in the case. The PI hearing, we've already said, limited relief. Sixty days.

But let me talk about the motion to transfer venue. Yes, Judge Whitley did raise the issue sua sponte. Right? He said what is this company doing in my court? What connection do they have to North Carolina?

But, you know, it wasn't like a fait accompli that he was going to transfer venue. He said I want to have briefing on it. And did Jones Day agree? Did they agree, you know what, Your Honor, it's true, we have no connection to North Carolina, we're fine, transfer us to New Jersey? No. They fiercely, fiercely advocated for the position that they had the right to be in North Carolina.

We briefed the issue, right, with the bankruptcy experts, Mr. Massey, Mr. Waldrep, Melanie Cyganowski, the professionals that we had to bring in. And we won. We won. They lost.

Your Honor, they never wanted this case to be in your court. They never wanted it to be here. And what Judge Whitley found in his opinion, based upon our briefing, our

legal arguments, was that this company manufactured venue in North Carolina to try to put themself there, and they didn't belong. So they never wanted the case to be here, and they never should have filed for bankruptcy on the duplicative record argument.

Your Honor, if the North Carolina record, right, that we created by stepping in for those 29 days, if it was duplicative, then why was it part of the record on appeal to the Third Circuit, right? If it was all the same, then it wouldn't have been part of the record, right? It all would have been covered in the New Jersey LTL 1 case, and there would have been no need to have the North Carolina record as part of the record. It was part of the record, and it was part of the record leading to dismissal, because it was not duplicative.

So, Your Honor, you know, when we take on these cases, you know, we hire medical experts that are necessary for the prosecution of the case. In a contingency fee arrangement, costs are advanced. If there is a recovery, the client reimburses for necessary costs in litigation.

But what is LTL saying? Are they saying that our clients should have to pay Jonathan Massey? That our clients should have to pay the Otterbourg firm? That our clients should have to pay a former bankruptcy judge in North Carolina, because a bankruptcy case was filed that never should have been filed, is what the Third Circuit said.

So should we bear the costs? Should our clients bear the costs? No. Under the substantial contribution law, under equity, out of fairness, Your Honor, LTL should pay.

And you should grant -- respectfully, you should grant our substantial contribution motion. Thank you very much, Your Honor.

THE COURT: Thank you, counsel.

Any other argument? All right. I'm going to take it under advisement and reflect on the arguments.

I do have a question. The statute doesn't speak of all or nothing, but it speaks as to substantial contribution and the efforts that were undertaken. And I will have to admit, I didn't go into detail on the underlying certifications.

Are the projects or the works broken down dollar amount by project?

MR. ABRAMOWITZ: I don't know that they're by project. They're by firm. And I would also note, Your Honor, that in the certifications, you will see that a number of the firms indicated that they had performed substantial services above those that are being requested. Because, not breaching attorney/client privilege, I indicated that they had to look for those services that were rendered that were substantially contributed as opposed to general services.

And you'll see in the certifications, in many of the

certifications, that there has been that culling. But it was not broken down by what they did, because a lot of this was done simultaneously. So, again, if that's your want, obviously, we would have to go back to the drawing board for preparing those fee applications. But I can indicate to you that they have been combed thoroughly by the applicants to make sure that the non-substantial aspects were taken out.

THE COURT: I will take a first run at looking at them. If I have further questions, I'll contact the applicants.

MR. ABRAMOWITZ: Thank you very much, Your Honor.

THE COURT: Thank you.

MR. PFISTER: If I may add, Your Honor, on that point --

THE COURT: Yes.

MR. PFISTER: -- for the AWKO application, we did divide our work into three phases. We called it the North Carolina phase, the trial phase, and the appellate phase. And in my certification -- or my declaration, rather, time entries in each of those phases are broken down.

And just like Mr. Abramowitz, we are not seeking substantial contribution for all of our time. Anything that was client specific or involved matters -- we exercised a fair amount of discretion in only including the matters that we thought were compensable. And I'll just note that, you know,

no one has taken issue with any line-by-line type thing.

So but with that, Your Honor, we certainly -- we'll provide any information the Court would like, but we certainly rest on the Court's knowledge of the case, knowledge of how everything unfolded and transpired, and the Court's assessment of the record to make the requisite factual finding.

THE COURT: Great. Thank you.

All right, counsel. As I said, it's under advisement. I'll issue a ruling in the near term.

That takes us to the balance of today's calendar, which points to where we're going in the future. As far as an order of dismissal, I saw a draft. And we have matters scheduled for the 22nd.

I'll throw it open. Does anybody wish to speak as to the steps to be taken going forward?

MR. MOLTON: Good morning, Judge. David Molton of Brown Rudnick here with my colleagues and co-counsel on behalf of the Talc Claimants Committee. Just to give you a heads-up of where we are on that, Judge, we did, after Friday's delivery of the opinion, put together a proposed order following in the template that we used in part one, TCC -- LTL 1.0 with a few changes.

But we did circulate that to all the co-movants, including the U.S. Trustee. We got comments from everybody, and I circulated it to the debtor as well. We've had some

informal, indirect, at least from my perspective, feedback from them. But we haven't yet had a formal meet and confer with them about the order.

It would be our request, Judge, that we move with all due speed to get a proposed order in front of you to enter. I would be hoping as soon as possible this week.

I would imagine that the debtor may have some issues with some of the provisions. And, you know, I can go through, you know, what I think those may be. But I'd probably be premature, because I really haven't talked to Mr. Gordon or Mr. Prieto.

I'm sorry for butchering your name last time, Dan. I won't do it again.

In any event, but we -- we're looking forward to doing that. And as we've done in the past, Judge, should it be that there is not a consent order by all the parties, we'd propose to deliver up to Your Honor the two competing orders but in a manner that is very easy for you to see what the differences are and to, you know, almost like a menu selection for Your Honor in order to pick them and get those -- get that entered as soon as we can.

If Your Honor would like, you know, authority or case law with respect to any particular point, we can deliver those. I would suggest that that be delivered as exchange, you know, with the proposed orders that the debtor submits theirs with --

if they think there's any authority that Your Honor needs to look at with respect to any proposed provision. They include that. We include that with ours.

Not briefing back and forth. We don't need that. I think Your Honor is fully capable of understanding the issues and utilizing whatever authority we think might be useful to you to get this done.

Again, we've got folks out there that are -- you know, have read the decision, read the -- read Your Honor's opinion. And we're looking very much forward to moving this case or moving the cases of the plaintiffs outside of this bankruptcy. And everybody, needless to say, can only do that once Your Honor enters an order.

So that would be my suggestion. And I think we can do that in the next day or two, if not sooner. And I'd urge that we schedule a meet and confer -- a formal meet and confer with debtor's counsel in order to do that.

We do have dates upcoming, Judge. And, actually, we have next -- I think it's next Tuesday the 8th was the date that objections to disclosure statement and solicitation procedures was due. I would imagine, Judge, that that needs -- we need some clarity on that.

And I do know from our perspective, you know, we went pens down on everything after your order -- or after your decision. With respect to that, we do know -- also, the

debtor -- one of the things that Your Honor had the treat of seeing was exchange by the Committee and others and the debtor as to what we call pre-order solicitation activities by the debtor. I'm not going to -- no need for me to editorialize the parties' positions on that. Your Honor is well aware of that. They've been articulated in the papers.

But they were asking for responses by the 15th of August, which is coming up again. We'd like clarity on that, Your Honor. We don't think anybody needs to do anything. And, indeed, we're hopeful we have a dismissal order this week so that we can start -- again, the plaintiffs and their counsel can start moving the cases in their courts of competent jurisdiction.

On the 22nd, Judge, we have a -- well, before I get to that, there's been some case management with respect to the appeals that are in front of Judge Shipp.

THE COURT: Right.

MR. MOLTON: And there are two of them, I believe, Judge. There's the FCR appeal for which there is a date -- I think it's the 11th, August 11th -- for the moving brief. And I -- on the PI appeal, Judge, I think that the debtors have their response earlier than that, I think.

UNIDENTIFIED SPEAKER: Today.

MR. MOLTON: It was today. We came to agreement with the debtor, and there were letters that went up to Judge Shipp

through Mr. Stolz's office today basically case managing those into abeyance until we -- you know, until this case is resolved by Your Honor's order.

THE COURT: That was the good news for Judge Shipp. He gets the bad news.

MR. MOLTON: Yeah. There you go. But on the 22nd, Judge, there's a boatload of plan motions that are going to require -- you know, would have required substantial attention, work, possibly discovery. All those, Judge, we believe should -- you know, are mooted out by Your Honor's opinion and clearly mooted out by Your Honor's forthcoming order. And we would ask Your Honor to deep six those into case management abeyance until Your Honor's order is entered.

I don't think, from my perspective, I missed anything. I'm looking over at my side. And, you know, I'll let the debtors put forward their response to my suggestion. Thank you, Judge.

THE COURT: All right. Thank you, Mr. Molton.

Mr. Gordon?

MR. GORDON: Good morning, Your Honor. Greg Gordon --

THE COURT: Good morning.

MR. GORDON: -- on behalf of the debtor. So a fair amount of this we're hearing for the first time. And in terms of the dismissal order itself, we didn't see anything until

yesterday morning from the other side. And we were traveling.

Having said all that, I don't anticipate much in the way of difficulty with issues going forward. I mean, there obviously -- there's at least two major issues in the form of dismissal order that we're going to have a disagreement over if we can't work them out. At the top of the list is a provision that would prohibit a refiling anytime within six months.

We honestly don't think Your Honor should even seriously consider that. There's been no showing of cause. I think your opinion itself urges the parties to continue the negotiation process. That would seem counter to that. This would seem to be asking Your Honor to prejudge any future filing, no matter what it is, when it occurs, whether there's a plan, what that plan might provide. And so we would strongly resist that.

And I would just say on that, if Your Honor has any inclination even to seriously consider it, then it should be briefed, and we would want the opportunity to brief it. Because we don't think there's any support for that or any case that would be anywhere close to being applicable on the facts.

And then the second probably issue we have, primary issue we have, and there's some others, is that we would oppose the concept of the Committee continuing in any form post-dismissal. We don't think there's any basis in the Bankruptcy Code for that. And that's another provision. If

Your Honor, you know, wants to -- you know, has any interest in considering that, then we would want to brief that as well.

Those are the two big things. There's other provisions that we've already expressed a point of view to the Committee on that we think are unnecessary like the fee application provisions. That seems to us like a formal process. It's not required. It will just engender significant expense. And we had a way to handle that in LTL 1 that seemed acceptable to the parties, and we would advocate for something like that.

So we're not interested in delaying anything. We're not interested in holding anyone up. But we do want to have time to talk to the other side, see if we can work out issues and come up with a form of order hopefully that's acceptable to the parties.

But I have a sense that the two issues I've identified, the continuation of the Committee and the prohibition against a future filing for 180 days, we're not going to reach agreement on that. If you can provide any guidance today, that would be helpful. If not, obviously that's fine as well. But I did want to flag that for the Court -- or flag those two issues.

I should also mention, Your Honor -- obviously this is no surprise -- we will be appealing. And that raises an issue about certification. And there have been discussions

about whether there may be an agreement on certification, obviously subject to Your Honor's approval. And I don't know whether we have an agreement today or not.

I think we are prepared to enter into a stipulation with the other side to certify the appeal. But if that's not done today, then we'll continue to have discussions with the other side about that as well. So I just wanted to make a comment on the record about that.

THE COURT: What about the calendar? And I'll get back to the other issues, and I'll hear from Ms. Richenderfer. But what about the upcoming calendars? It would make sense to have pens down or -- approach?

MR. GORDON: That would be my view, Your Honor. There's no reason to put anybody to task to respond to things that will basically, in our view, be moot upon dismissal of the case.

MR. MOLTON: Judge, just to let you know that, if I wasn't clear, we'd be suggesting they be taken off the calendar to show sufficient clarity to all of those out there who may be thinking about responding and had been, you know, working on that in the event this case continued that they need not do that. So we'd suggest --

THE COURT: Yeah.

MR. MOLTON: -- that they be taken off the calendar.

THE COURT: I was going to suggest the approach I've

taken to other cases, is that they be marked withdrawn without prejudice to be reinstated by letter if they -- if it's appropriate. Well, they go back on the calendar if some event makes it that they should be.

MR. GORDON: We're fine with that, Your Honor.

THE COURT: All right. So what I would ask then is why don't the parties just send a letter to chambers outlining the matter. I mean, we have a calendar on for the -- for 8/22. But I just want to make sure we have it all appropriate.

If there's any motions that need to be entered, just to preserve rights or address them, I'm sure we all can agree. But we'll clarify that.

As to the two issues that were raised, I guess, number one, I saw in the proposed language that was provided to the Court, the 180-day bar. It would be extraordinary for me to want to enter such -- I don't -- on the third filing. I don't even do that in Chapter 13s, so let alone restrict any complicated Chapter 11 case from whichever direction.

Parties reserve their rights, of course, but I would not be inclined to provide for any bar. I just don't have a crystal ball, and I don't think I should be expected to have a crystal ball.

As to the TCC -- and I guess my question is, if there's an obvious intent to appeal, how do we handle the TCC's rights to oppose the appeal or any other issue that might arise

post-dismissal?

MR. GORDON: Well, there are multiple other parties, Your Honor, as you know, that moved for dismissal. So it's not like those appeals won't be prosecuted. But from our perspective, it just comes down to a simple issue of whether there's any basis in the Code to allow a Committee to continue in a post-dismissal environment. And we don't think there is.

THE COURT: Standing here, I know we touched on this in the prior matter. Yet it was resolved. I don't -- I hate to have briefing, because it all comes just out of more expense. But I don't want to -- I don't want this to delay entry of the order. I don't think anybody's served by delaying a dismissal order.

Mr. Molton?

MR. MOLTON: Yeah, Judge. I'm sorry. I don't want to -- I didn't want to push Mr. Gordon away. A few things. We believe, Your Honor, under the facts and circumstances of this case our request for a prohibition on filing for a period is appropriate. And there is Code provisions and Code authority for it.

We'd like Your Honor to consider that. And that wouldn't be extensive briefing. That would just be reference to certain authorities as we submit our proposal to you.

Interestingly, the debtor had agreed to Committee existence in part one, LTL part one, for the purpose of their

alleged purported appeal to the Supreme Court of the United States and their stay motion to the Supreme Court of the United States. Those never happened. But if Your Honor goes back and looks at the docketed order that Your Honor actually entered on consent, that's in there. And if Your Honor would like briefing on that or case authority on that, we'd be glad to -- to supply you.

What we don't want to do, Judge, is slow anything down. And to the extent that it looks like -- and I read you, Your Honor, as saying that you don't want to slow things down either. But to the extent that any delay occurs, clearly we'd be looking for, you know, Your Honor to entertain or to remove the preliminary injunction, at least with respect to all the non-debtors if this bogs down in anything. But from what I'm getting from Mr. Gordon and both from you is that this should move very quickly.

The fee procedures, Judge, you know, Your Honor knows the history of that. We did agree to a simplified fee procedure in part one dismissal order, LTL 1. It wasn't so simple. And we ran into some issues with respect to it. And, accordingly, we want to do it by the book. We want to do it by the book. And that's what we put in there.

And, Judge, with respect to certification, I think that, as we've told informally, I think, Mr. Prieto and the debtor -- and no doubt Mr. Gordon, I hope, has been told of

this -- I think all the (indiscernible) movants would agree to a stipulation agreeing to direct appeal to the Third Circuit, of course the circuit itself, direct appeal by the debtor. Of course the circuit itself would have to agree to that, but we can accelerate that process by agreeing to a stipulation.

So those are my points, Judge. I don't think I have anything else.

THE COURT: Well, good. That'll obviate the need for another opinion on direct appeals.

Ms. Richenderfer?

MS. RICHENDERFER: Good morning, Your Honor. Linda Richenderfer for the Office of the United States Trustee. I just want to briefly remark on the a couple of the points that are the highlights that Mr. Gordon divulged to us today that were the initial sticking points, at least, as he put it.

The U.S. Trustee very much believes that there should be some language in there regarding a time period within which this debtor cannot re-file. I appreciate what Your Honor's process here is in Chapter 13s. I'm more used to Chapter 13s than 7s down in Delaware.

And I will tell you under circumstances like this, I have even gotten agreements out of the debtors. I realize this is a Chapter 11 company, but I would imagine that we will also be supplying some affirmation on this. I think that there's great precedent here concerning 2 hours and 11 minutes, and I

think that that in and of itself gives reason why there should be some period of time.

Your Honor, as to -- with respect to the TCC, all I can point to is that when they were given the ability to stay in existence the last time, we did not object to that.

The formal process. Your Honor, that was done without consultation with the United States Trustee. I don't know if Your Honor recalls, but we knew there was an order in process. By the time we got it and were able to start thinking of comments, the debtors presented it to Your Honor's chambers before we had time. We reached out for more time, and I don't know what happened but we never got the time.

But that was one of the things we were going to strongly object to, because it takes away from us -- our responsibility, which is to review the fees. It's my understanding that it did not go well until recently. There were still four major professionals from the first case who hadn't been paid. Needless to say, when you hold the checkbook, you can make decisions. I think there's still one that hasn't been paid from the first case.

I don't know what the issues are, but all I know is that if we do the formal process, we will have our input, and people will not be left waiting and hanging out there. If there's a problem, the debtor has to put it on the docket. They have to explain it to you. And then Your Honor gets to

make the decision as it is also Your Honor's purview. So we would be against any informal process.

And as to certification, that is something we will take back and we will talk to our client about. Again, first time I'm hearing about it. I think sometimes we get lost in the shuffle, because this time we were a movant. So we will definitely take that back.

But whatever timeline Your Honor would like, we will have information of our own that we will submit regarding the time period during which there will be sort of a stay, a filing if you will, and that we think that the formal process is the way. And that's what the Code says. It's not unusual for dismissal orders to (indiscernible) the process that will be followed for the fee applications that will follow. Thank you, Your Honor.

THE COURT: All right. Thank you.

Mr. Malone?

MR. MALONE: Good morning, Your Honor. Robert Malone, Gibbons PC, on behalf of the States of Mississippi and New Mexico. Your Honor, just with respect to some of the comments that have been going back and forth -- and I think one obvious thing that's not been mentioned today is -- and I don't know if it would be applicable in this situation anyhow seeing that it's a dismissal. But if the debtors are going to seek any kind of stay of Your Honor's order pending the appeal, I

think that would have to be an operative fact with respect to whether they're opposing the existence of the TCC to proceed with the appeal or not.

So maybe that's something that we'll note today. If they're -- if they have the intent to seek a stay of this Court, that would probably be something that the Court should have to take into consideration.

The second one is more as a comment with respect to the direct certification to the Third Circuit. My clients do not oppose such a request by the debtor.

THE COURT: Thank you, Mr. Malone.

Mr. Maimon?

MR. MAIMON: Thank you, Your Honor. So I think that with regard to direct certification, Your Honor, I don't think that even a stipulation between the parties is the final order. There are two more authoritative words. One is Your Honor's, because parties can stipulate to direct certification but it's only the Court exercising its jurisdiction that has to grant certification.

My understanding is that that happens after a notice of appeal is filed, which again can only be filed after the dismissal order is entered. So first order of business, I think, logistically is the entry of a dismissal order which will get rid of the PI, the stays, and we can be moving to the next stage which is the debtor's stated intent to seek an

appeal to the Third Circuit. And if they're serious, they'll file a notice of appeal quickly after that. And then Your Honor will decide, A, whether or not to grant that application for direct certification, and the circuit will decide whether or not to take it or not. Because, again, it's, again, not up to the parties.

With regard to a bar on refiling, I think that one of the things that Your Honor needs to take into consideration -- and in the course of delivering the opinion that you did, you didn't have to deal with the issues that were raised in different -- by different movants, and particularly the United States Trustee, with regard to what happened between --

THE COURT: Bear with me one second.

(Court and clerk confer)

THE COURT: Go ahead. I'm sorry.

MR. MAIMON: No. Your Honor didn't have to deal with those issues, because Your Honor found no financial distress and, therefore, a good faith requirement for filing the bankruptcy absent and ordered the dismissal in your opinion. However, there was quite a lot that happened without disclosure to the Court, without disclosure to the U.S. Trustee, without advice to the Official Claimants' Committee which was charged with representing the interests of all claimants in LTL 1.

We shouldn't be put in that position again. And so one of the things that I think that it's important, and the

Court has the authority to do, is had we known when the circuit court issued its opinion last January that these meetings were taking place, that term sheets were being drawn up, that meetings with the then FCR were taking place, we would have sought discovery then. We would have asked for transparency then so that we didn't have all this that became ultimately not part of Your Honor's decision but it became the subject of a lot of motion practice, both in the PI as well as in the motion to dismiss.

So I would suggest that the Court order the debtor to disclose all communications, all documents with regard to any discussions or plans with regard to a refiling and then take into consideration the parties' contentions or positions about the appropriateness of -- for a period of time, not forever but for a reasonable period of time, with -- which I think Your Honor, having presided over the motion to dismiss hearing, having seen the expert reports, having looked at what the debtor itself says about its assets and available funds, something reasonable, I think, could be done.

But we shouldn't be put in a position where there are clandestine and secret meetings taking place while they're still debtor in possession. And that's really inappropriate, and we should avoid that at all costs. Thank you, Your Honor.

THE COURT: All right. Thank you, Mr. Maimon.

Is there anybody who wishes to be heard appearing

remotely? All right.

Then here's what we're going to do. I would ask if it's possible -- today is Wednesday. Assuming we can -- there's a version of the order that debtor's counsel has already seen, by close of business Friday if I could have submissions limited -- we'll put a five-page, single-space limit on submissions with respect to any provision that you -- parties can agree upon. Most likely will be the 180-day bar and the TCC continuation and the fees -- and the fee.

Provide me with your argument for or against. I would like to enter an order. I'll be away Monday, Tuesday, Wednesday. Doesn't mean I'm not reachable. I'll just be at the Mid-Atlantic conference, ABI conference.

If I have the order and I have the arguments, it is my intent to enter an order of dismissal next week. If I have an issue, I'll call the parties to have -- and we can have a telephone conference.

Provide me with the list of matters that are on the calendar for the balance of August that we'll mark withdrawn without prejudice to be reinstated by a letter request as appropriate.

Any other issues, Mr. Gordon?

MR. GORDON: I hate to ask this, Your Honor, but I actually have a mini vacation planned through the weekend, and I would ask if we could have that date pushed to Monday close

of business if possible.

THE COURT: Of course. Monday is fine. It probably means I don't have to ruin my few-day break either. But it is still my goal to have an order entered next week. Maybe it will be the end of the week. All right?

MR. GORDON: Thanks, Your Honor.

THE COURT: All right. Mr. Stolz?

MR. STOLZ: Your Honor, can we make that 5 p.m.? Midnight filings are killing me with overtime on my staff. So if we can make that 5 p.m. on Monday?

THE COURT: Oh, well, we'll do New York. 9 p.m.

MR. STOLZ: 9 p.m. Thank you. Thank you --

THE COURT: How's that for splitting the pie?

MR. STOLZ: Eastern time.

THE COURT: 9 p.m. Eastern. Right. Wow. Talk about a lack of trust here.

All right. Thank you, all. Some of you I'll be seeing in the Whittaker matter. I'm sure I'll be seeing all of you at some aspect of this. I appreciate your time and effort and all the professionalism.

Mr. Gordon?

MR. GORDON: So, Your Honor, Greg Gordon. I wanted to say the same on behalf of the debtor, on behalf of J&J. We very much appreciate the time Your Honor has dedicated to this. We appreciate the way you've handled the proceeding, the

respect you've shown to everyone. You have a great staff. And we're just very appreciative of all the time and the effort that's been put in by everyone on your staff.

THE COURT: Well, thank you. My staff thanks you all as well.

Mr. Molton?

MR. MOLTON: Yeah. Judge, I just want to echo that and reiterate that Mr. Gordon and I are aligned on our thanks to Your Honor and your wonderful staff that has made this very challenging and extraordinary case easier to progress and manage in front of Your Honor. Thank you, Judge.

THE COURT: Great. Thank you.

Be safe, everybody. Take care.

IN UNISON: Thank you.

(Proceedings concluded at 11:44 a.m.)

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C E R T I F I C A T I O N

We, DIPTI PATEL and LIESL SPRINGER, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Dipti Patel

DIPTI PATEL

/s/ Liesl Springer

LIESL SPRINGER

J&J COURT TRANSCRIBERS, INC. DATE: August 3, 2023